

48A C.J.S. Judges § 25

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

II. Selection, Eligibility, and Qualification

A. Selection

2. Manner or Method of Selection

a. In General

§ 25. Generally

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West's Key Number Digest

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The manner or method of the selection of judges must be in accordance with applicable law.

A state has the power to prescribe the manner or method in which judges are to be selected.¹ Such manner or method of selection must, however, be in accordance with all applicable law.²

States may determine whether its judges are elected or appointed, and there is nothing in the Federal Constitution that prohibits that right.³ While some authority holds that public policy favors an elected over an appointed judiciary,⁴ other authority holds that neither election nor appointment of judges is preferred over the other.⁵ Indeed, under a state's constitution, each process may have its place under different circumstances.⁶

To the extent to which the constitution is silent on the subject, or expressly delegates the power to the legislature, the determination of the method or manner of selecting judges is often within the province of the legislature,⁷ particularly where the office of judge is created by the legislature.⁸ It is generally not within the province of the judiciary to determine the manner or method of selecting judges.⁹

In some jurisdictions, where the office of judge is a constitutional one, the legislature has no power to prescribe the manner of selection of a judge unless authorized to do so by the constitution.¹⁰ The legislature, in providing for the selection of judges, may not act in contravention of constitutional provisions.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Statute granting state Judicial Council authority to recommend retention or non-retention of sitting judges in retention elections did not violate state constitution; section of constitution requiring judges to be subject to approval or rejection on a nonpartisan ballot vested broad power in the legislature with regard to the Council. Const. Art. 4, § 4; AS 22.15.195. [Alaska Judicial Council v. Kruse](#), 331 P.3d 375 (Alaska 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Lefkovits v. State Bd. of Elections](#), 400 F. Supp. 1005 (N.D. Ill. 1975), judgment *aff'd*, 424 U.S. 901, 96 S. Ct. 1092, 47 L. Ed. 2d 306 (1976).
- 2 U.S.—[Halleck v. Berliner](#), 427 F. Supp. 1225 (D.D.C. 1977).
- 3 Colo.—[Marshall v. Price](#), 6 Fed. Appx. 788 (10th Cir. 2001).
- 4 Pa.—[In re Determination of Priority of Commission Among Certain Judges of Superior Court and Commonwealth Court](#), 493 Pa. 555, 427 A.2d 153 (1981).
- 5 Minn.—[Clark v. Ritchie](#), 787 N.W.2d 142 (Minn. 2010).
- 6 Minn.—[Clark v. Ritchie](#), 787 N.W.2d 142 (Minn. 2010).
- 7 Ill.—[Lewis v. Dunne](#), 63 Ill. 2d 48, 344 N.E.2d 443 (1976).
Court not named in constitution
Colo.—[People ex rel. Tucker v. Rucker](#), 5 Colo. 455, 1880 WL 190 (1880).
- 8 La.—[Jones v. State](#), 336 So. 2d 59 (La. Ct. App. 1st Cir. 1976), writ denied, 336 So. 2d 515 (La. 1976).
Implied power
Power to create court necessarily implies power to provide for appointment or election of judge to exercise court's jurisdiction.
Fla.—[State v. Sullivan](#), 95 Fla. 191, 116 So. 255 (1928).
- 9 R.I.—[Gorham v. Robinson](#), 57 R.I. 1, 186 A. 832 (1936).
Desirability not determinable by court
Or.—[Geiser v. Myers](#), 249 Or. 543, 439 P.2d 859 (1968).
- 10 La.—[Russell v. McKeithen](#), 239 So. 2d 656 (La. Ct. App. 1st Cir. 1970), writ issued, 256 La. 895, 240 So. 2d 232 (1970) and judgment *aff'd*, 257 La. 225, 242 So. 2d 229 (1970).

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Ala.—[Opinion of the Justices](#), 357 So. 2d 648 (Ala. 1978).

Divisions, districts, or statewide

U.S.—[Holshouser v. Scott](#), 335 F. Supp. 928 (M.D. N.C. 1971), judgment [aff'd](#), 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

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